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Supreme Court, U.S.
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No. 09-1396

IN THE

Supreme Court of the United States

RICKY LEE ALLSHOUSE, JR.,

Petitioner,

v.

PENNSYLVANIA,

Respondent.

On Petition for a Writ of Certiorari
to the Pennsylvania Supreme Court

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

The filings in *Iowa v. Bentley*, No. 07-866, and this case make clear that prosecutors and criminal defendants across the nation agree that the question of the Confrontation Clause's applicability to statements obtained in child protection interviews is one of great importance over which the lower courts are intractably divided, and that only this Court can produce clarity. As the State acknowledges, this case is an "excellent vehicle" for undertaking that task. BIO 22. This Court should follow the lead of both parties and review the case.

Perhaps the only difficult question is whether this Court should grant certiorari here right away or wait until proceedings in *Michigan v. Bryant*, No. 09-150, are concluded before taking up this case. There are compelling reasons to grant certiorari right away. The question presented arises on a daily basis across the country, and courts need immediate guidance. Furthermore, the analytical questions that child protection interviews raise go far beyond anything likely to be addressed in *Bryant*. As proof of that point, the State's BIO expressly disclaims the Pennsylvania Supreme Court's reasoning that the child witness's statements in this case were nontestimonial because they were made during an "ongoing emergency." *See* BIO 1. Instead, the State aligns itself with the alternative rationales offered by that court's concurring justices, Pet. App. 40a-52a, Pennsylvania's lower courts, Pet. App. 65a-69a; Pet. 6-7, and other state courts on its side of the conflict, *see* BIO 12-19; Pet. 19-22. On the other hand, the fact that *Bryant* will be considered and decided by an eight-member Court may provide reason to delay

granting certiorari until the proceedings in that case conclude.

Petitioner takes no position on the matter of timing. All he asks is that this Court heed the calls of the states, practitioners, and parties across the country and resolve whether statements children make to child protection workers who are investigating suspicions of past abuse are testimonial. The issue is too important for the current uncertainty to persist.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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October 5, 2010